

Message Text

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SUBJECT: INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE
INTERNATIONAL LAW

REFS: (A) STATE 201740; (B) BRASILIA 7273

1. SUMMARY: EMBOFF DISCUSSED CONTENTS REFTEL WITH RESPONSIBLE
FONMIN OFFICER. BRAZILIAN POSITION APPEARS TO BE ROUGHLY IN
LINE WITH THAT OF U.S. AS PRESENTED REFTEL. END SUMMARY.

2. EMBOFF FOLLOWED UP ON REFTEL (B) WITH THE NEW CHIEF OF
THE FOREIGN MINISTRY'S JURIDICAL DIVISION, COUNSELLOR
AGENOR SOARES DOS SANTOS, ON JANUARY 3. AFTER PREFACING
HIS REMARKS BY NOTING THAT HIS VIEWS WOULD HAVE TO BE
CONFIRMED BY THE MEMBERS OF THE BRAZILIAN DELEGATION, WHICH
WILL HOLD ITS FIRST MEETING ON JANUARY 7, AGENOR SPOKE TO
EACH OF THE ITEMS LISTED REFTEL. HE WAS OF THE OPINION
THAT NO ATTEMPT TO LIMIT THE NUMBER OF ITEMS TO BE
CONSIDERED AT THE CONFERENCE WOULD BE SUCCESSFUL; MOST
CONFERENCE PARTICIPANTS, LIKE BRAZIL, WERE ONLY NOW
BEGINNING TO CONSIDER THE SUBSTANCE OF THE AGENDA, HE
THOUGHT, AND THIS WOULD NOT LEAVE SUFFICIENT TIME BEFORE
THE START OF THE CONFERENCE TO REACH A CONSENSUS ABOUT
LIMITING ITS SCOPE. HE WAS, IN ADDITION, OF THE
IMPRESSION THAT THE CONFERENCE AGENDA HAD BEEN SET UP
IN RESPONSE TO THE REQUESTS OF THE PARTICIPANTS AND
THAT IT WOULD BE DIFFICULT TO CONVINCE ANY OF THE
PARTICIPANTS TO WITHDRAW ITS REQUEST. HE AGREED THAT
THE CONFERENCE, EVEN IF EXTENDED FOR A THIRD WEEK,
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HAD LITTLE HOPE OF CONSIDERING ALL ELEVEN TOPICS.

3. AGENOR COMMENTED ON EACH OF THE TOPICS AS FOLLOWS:

(A) MULTINATIONAL COMMERCIAL COMPANIES -- AN ITEM OF CONSIDERABLE INTEREST FOR BRAZIL. BRAZDEL WILL BE MOST INTERESTED IN REACHING AN ACCEPTABLE DEFINITION OF SUCH COMPANIES THAT WILL DISTINGUISH BETWEEN A MULTINATIONAL IN THE MARKET SENSE AND A MULTINATIONAL IN TERMS OF CAPITAL.

(B) COMMERCIAL COMPANIES -- A RELATIVELY UNIMPORTANT ITEM ON WHICH BRAZDEL HAS NOT TAKEN A POSITION.

(C) INTERNATIONAL SALE OF GOODS -- SINCE THIS IS UNDER DISCUSSION IN WORLD FORA, IT IS TOO EARLY TO ARRIVE AT A REGIONAL POSITION.

(D) BILLS OF EXCHANGE, ETC. -- A RELATIVELY UNIMPORTANT ITEM ON WHICH BRAZDEL HAS NOT TAKEN A POSITION.

(E) INTERNATIONAL COMMERCIAL ARBITRATION -- THIS IS THE MOST IMPORTANT ITEM OF THE CONFERENCE FOR BRAZIL. BRAZDEL BELIEVES THE PRESENT DRAFT OFFERS A GOOD BASIS FOR FURTHER NEGOTIATIONS. (AGENOR DECLINED TO BE MORE SPECIFIC ON THIS ITEM).

(F) INTERNATIONAL WESTERBORNE TRANSPORTATION -- ANOTHER ITEM WHICH IS UNDER DISCUSSION IN INTERNATIONAL FORA, RENDERING PREMATURE AN ATTEMPT TO REACH A REGIONAL POSITION ON IT.

(G) LETTERS REQUISITORIAL AND ROGATORY AND (H) FOREIGN JUDICIAL JUDGEMENTS -- BRAZDEL IS NOT SURE THAT EITHER OF THESE DRAFT CONVENTIONS IS NECESSARY, SINCE EXISTING BILATERAL AGREEMENTS AND ACCORDS APPEAR TO BE WORKING WELL. IF NEW DRAFT CONVENTIONS WERE TO BE CONSIDERED ON THE BASIS OF SUPERSENDING AND

NULLIFYING ALL PRIOR AGREEMENTS, THAN BRAZIL COULD SEE THE MERIT OF THAT APPROACH, AND WOULD PROBABLY FOLLOW IT. THERE IS SOME DOUBT, HOWEVER, WHETHER THE BRAZILIAN COURTS WOULD ACCEPT THE NORTH AMERICAN SYSTEM OF EMPOWERING CONSULS TO PERFORM REQUISITORIAL AND ROGATORY ACTS. WITH THIS EXCEPTION, BOTH DRAFT CONVENTIONS APPEARED TO HAVE BEEN WELL UNCLASSIFIED

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DRAFTED.

(I) TAKING OF EVIDENCE ABROAD -- BRAZDEL IS CONFUSED BY THIS ITEM; THE DRAFT CONVENTION APPEARS TO BE MORE A COMPILATION OF THE DIFFERENCES AMONG EXISTING NATIONAL LAWS THAN A MEANS OF RESOLVING THEM. BRAZDEL CANNOT APPROVE THIS ITEM AS IT STANDS.

(J) POWERS OF ATTORNEY -- BRAZDEL HAS NO SUBSTANTIVE OBJECTION TO THIS ITEM, BUT DOES NOT CONSIDER IT A PRIORITY ITEM.

(K) DEVELOPMENT OF OTHER TOPICS -- BRAZDEL WILL SUPPORT THE CALLING OF A FOLLOW-UP CONFERENCE (TO BE CALLED A YEAR OR EIGHTEEN MONTHS AFTER THE CONCLUSION OF THE PRESENT ONE) TO CONSIDER OTHER TOPICS.

4. AGENOR STATED THAT BRAZIL'S AMBASSADOR TO THE OAS, PAULO PADILHA VIDAL, WOULD BE INFORMED IMMEDIATELY OF THE OUTCOME OF THE JANUARY 7 DELEGATION MEETING, AND ASKED TO TAKE UP THE BRAZILIAN POSITIONS WITH PARTICIPANTS IN THE CONFERENCE. AGENOR SUGGESTED THAT THE DEPARTMENT MIGHT WISH TO CONTACT VIDAL ON JANUARY 8 OR 9 FOR A FIRM READING OF THE BRAZILIAN POSITIONS.

5. BRAZDEL WILL CONSIST OF AMBASSADOR GERALDO NASCIMENTO SILVA, LAW PROFESSOR HAROLDO VALDAO, AND COUSELLOR AGENOR SOARES DOS SANTOS AND FIRST SECRETARY LUIZ DILERMANDO DE CASTELLO CRUZ, BOTH OF FONMIN JURIDICAL DIVISION.
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